IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, TWENTY FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 2162 of 2003

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 29/01/2003 in WP NO : 28270 OF 1998 on the file of the High Court.)

Between:

M. Konda Reddy, S/o. M.N. Reddy, Hyderabad District Coop. Central Bank Limited, Hyderabad.

..... APPELLANT

AND

1 The Chairman, Hyderabad District Cooperative Central Bank

Limited, Nampally, Station Road, Hyderabad.
2 The Commissioner for Cooperation & Registrar of Coop.

Societies, Govt. of A.P., M.J. Road, Hyderabad.
3 B. Padma Reddy, Asst. General Manager, The Hyderabad

District Coop. Central Bank Ltd., Kukatpally Branch, Hyderabad.
4 A.V. Seshagiri Rao, Asst. General Manager,
The Hyderabad District Coop. Central Bank Limited, Kukatpally

Branch, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant:MR.M.RAMA RAO

Counsel for the Respondent No.: MR.R.RADHA KRISHNA REDDY

The Court made the following :

JUDGMENT: (Per Hon'ble Sri Justice P.Lakshmana Reddy)

Aggrieved by the order of the learned single Judge dated 29.01.2003 in W.P.No.28270/1998 dismissing the writ petition, the writ petitioner therein filed this writ appeal.

The relevant facts in brief are as follows:

The appellant filed the said writ petition before the learned single Judge seeking declaration that action of the respondents 1 and 2 in issuing the proceedings dated 27.03.1997 giving him promotion as a manager only with effect from 31.10.1991 instead of from 19.04.1984 when the ban was first lifted and to give direction to promote him as Manager with effect from 19.04.1984 and also to consider his case for promotion as Assistant General Manager from the date when it fell vacant with retrospective effect. The appellant-writ petitioner further sought declaration to the effect that the respondents 3 and 4 are juniors to him in the cadre of Assistant General Manager and also to grant all consequential benefits like arrears of pay in the category of Manager and Assistant General Manager and also seniority and other benefits. The learned single Judge dismissed the writ petition on the ground that there are no specific directions in the earlier writ petitions basing on which the petitioner is claimed for the reliefs of either for promotion or for any other consequential benefits with effect from 1984, the date on which the post of Manager had fell vacant.

Aggrieved by the said dismissal of the writ petition, the writ petitioner filed the present Writ Appeal contending that the learned single Judge has not properly considered the directions issued by this Court in W.P.No.7792 of 1984 dated 13.11.1987 and W.P.No.9713 of 1991 dated 15.07.1996 directing the authorities to consider the case of the appellant for promotion from the date of the vacancy with retrospective effect and if the case of the appellant is considered as per the directions of this Court in the above said writ petitions, his promotion should

be considered in the month of April, 1984, but not 1987. The learned single Judge failed to consider that the grievance of the appellant as well as the directions of this Court are to promote the appellant as Manager with effect from April, 1984, and the amalgamation as well as the circular issued was in the year 1987 which have no effect at all, on the directions as well as promotion to be given to the appellant. The learned single Judge ought to have considered that the authorities have continued several unqualified persons as Manager, even exempting the qualifications relaxing the rules, which has been held illegal and set aside by this Court in the writ petitions filed by the appellant and hence the appellant's case ought to have been considered in the month of April, 1984. The appellant prays for setting aside the order of the learned single Judge dated 29.01.2003 passed in W.P.NO.28270 of 1998 and to allow the writ petition as prayed for.

During the course of hearing of the appeal, the learned counsel for the appellant vehemently contended that this Court in W.P.No. 7792 of 1984 filed by the present appellant and another categorically held that as per the rules till the persons qualified are absorbed, the question of considering the exemption for unqualified persons does not arise and that as the respondents resorted to giving exemption for unqualified persons by relaxing the rules and therefore it has to be viewed that it was made with a *mala fide* intention to defeat the interests of qualified persons and hence the appellant has to be given promotion from the date of lifting of ban which was lifted during the pendency of the said writ petition which was disposed of on 13.11.1987 and that admittedly the ban was lifted in April, 1984 by which time there were six vacancies of Managers and the appellant was the only qualified person to be promoted as manager and therefore the appellant ought to have been promoted as Manager in April, 1984 and that the respondents gave deaf ear to the direction given by this Court in W.P.No.7792 of 1994 dated 13.11.1987 and gave promotion only with effect from 31.10.1991 instead of from 19.04.1984 and that the learned single Judge erred in dismissing the writ petition.

On the other hand, the learned standing counsel appearing for the respondents submitted that though the ban was lifted and orders were issued by the Commissioner and Registrar of
Co-operative Societies by the proceedings dated 19.04.1984, permitting the

first respondent to fill the posts of Managers simultaneously another proceedings were issued on the same day granting relaxation regarding length of service and the said relaxation was challenged by the petitioner in W.P.No.7792 of 1984 and during the pendency of the said writ petition, no promotions could be made and finally the said writ petition was disposed of only on 30.11.1987 with certain directions, but in the meanwhile, the Government of Andhra Pradesh while making suitable amendments to the A.P.Co-operative Societies Act, they abolished the erstwhile Primary Agricultural Development Banks and merged them with the District Co-operative Central Bank with effect from 01.04.1987 and in view of that, the commissioner of
Co-operation and Registrar of Co-operative Societies issued a circular dated 24.02.1987 imposing a ban on recruitment and promotions in the Primary Agricultural Development Banks and District Co-operative Central Bank until the process of
re-organisation under Single Window system is completed and hence the management of the first respondent bank could not fill up the posts of managers sanctioned on 19.04.1984.He further submitted that the preparation of the seniority list has resulted in lot of litigation in view of writ petitions filed before this Court and ultimately it took lot of time till the matters were settled and it was only thereafter promotions were effected under which the petitioner as well as other eligible candidates for the post of Managers were considered and promoted with retrospective effect from 31.10.1991 and that the present writ petitioner is kept in the seniority list above Smt.Subba Laxmi against whom the petitioner was claiming seniority. The learned counsel further submitted that in the writ petitions filed by the petitioner there were no specific directions to promote the petitioner with effect from the date on which the post of Manager fell vacant and on the other hand directions were in terms of the judgment in W.P.No.3218 of 1989 where the direction is to promote the petitioners in that writ petition from the date on which the respondent No.4 therein was promoted and hence the promotion already issued by the first respondent is proper and just and that the writ petitioner is not entitled for any relief sought for in the writ petition.

The learned standing counsel submitted that the learned single Judge considered all the contentions raised by the appellant-writ petitioner and rightly dismissed the writ petition giving valid reasons and therefore there is no need

for interference by this Division Bench.

After the matter was reserved for judgment, the learned Standing Counsel made special mention contending that some more documents are to be filed for consideration. This Court conceded the request of the learned standing counsel and permitted him to file additional documents on 21.07.2005. The learned standing counsel filed the documents along with written submissions. The learned counsel for the appellant also filed reply written submissions. The documents filed by the standing counsel along with written submissions are the following:

1. Proceedings dated 19.04.1984 issued lifting bank and to fill up 6 manager posts.

2. Proceedings dated 19.04.1984 issued granting educational relaxation of 6 persons.

3. Seniority list in Accountants Cadre (category IV) dated 22.12.1986.

4. Affidavit in W.P.No.9713 of 1991 filed by Sri M.Konda Reddy challenging in-charge arrangement in manager's cadre.

5. Proceedings dated 07.07.1994-promoting Smt.Ch.Subbalakshmi (unqualified person) as Manager w.e.from 31.10.1991 from Accountant cadre.

5.A. Proceedings dated 27.03.1997 promoting the appellant

M.Konda Reddy as Manager with effect from 31.10.1991

from accountant cadre with all benefits.

6. Proceedings dated 15.09.1997 promoting qualified persons as Managers with effect from 15.07.1997 from Accountant cadre.

7. Proceedings dated 28.06.1994 promoting Sri M.A.Quddus respondent No.4 (unqualified person) W.P.No.3218 of 1989 as Assistant General Manger with effect from 24.03.1993 from Manager cadre.

8. Proceedings dated 01.11.1996 promoting (qualified person) Sri S.Venugopal Reddy 1st petitioner in W.P.No.3218 of 1989 with effect from 23.04.1993 as Assistant General Manager from manager cadre.

In the written submissions the learned standing counsel mainly contended that the respondent bank could not promote the appellant to the post of manager after lifting ban on 19.04.1984, before imposing fresh ban on 24.02.1987 in the existing six vacancies, for lack of seniority. According to the learned standing counsel there were 14 seniors above the appellant in the cadre of accountants by 19.04.1984 and therefore the appellant was not eligible for promotion as on 19.04.1984 and hence his promotion cannot be given with retrospective effect from 19.04.1984. In support of his contention, he filed the seniority list in the accountants cadre (category IV) prepared on 22.12.1986. In the said seniority list the name of the appellant-M.Konda Reddy is shown as Sl.NO.15 and Smt.Subbalaxmi is shown as Sl.NO.2.

In the written submissions filed on behalf of the appellant, it is submitted that six candidates to whom relaxation of rules were granted simultaneously on 19.04.1984 on which date the permission was granted to fill up six manager posts were unqualified candidates and hence the appellant filed W.P.No.16367 of 1986 challenging the permission of unqualified candidates who were permitted by relaxing the rules and the said writ petition was allowed and the relaxation was set aside an therefore there were no qualified candidates above the appellant by 19.04.1984 and therefore the contention of the standing counsel that there were 14 candidates above the appellant by 19.04.1984 to be promoted as managers against six vacancies, is not correct.

The points that arise for consideration in this writ appeal are:

i. *Whether the appellant-writ petitioner is entitled for promotion as Manager with effect from 19.04.1984 and for subsequent promotions and other benefits?*

ii. *Whether the order of the learned single Judge is sustainable in law?*

iii. *To what result?*

POINTS (i) & (ii):

This litigation has got chequered history. The appellant herein was driven to this court several times and this Court granted relief in all the writ petitions filed by him, but yet he could not enjoy the fruits of the relief granted by this Court for about a decade. He is since retired. The litigation started when a vacancy of manager post arose in April, 1984 by which time the appellant was only the qualified person to be promoted as Manager to the category-III from category-IV. The required qualification to be considered for promotion to category-III is graduation. Though, there were seniors in category-IV to the appellant, they were matriculates and they were not qualified to be considered for promotion as Managers. When the respondents wanted to relax the qualification for promotion in respect of all the employees who are seniors to the appellant, the appellant filed the W.P.No.16367 of 1986 on the file of this Court and this Court by its order dated 07.07.1987 quashed the proceedings relating to the relaxation of qualification for promotion. When the respondents attempted to promote the unqualified persons to the post of Manager without giving promotion to already qualified persons, the appellant filed another W.P.No.7792 of 1984 complaining that unqualified persons were being promoted. The said Writ Petition was disposed of by this Court by order dated 13.11.1987 directing the respondents that only qualified persons should be considered for promotion and when qualified persons are available, those persons must be considered first before relaxing the qualification for unqualified candidates. This Court further observed that if the unqualified persons are considered relaxing the rules when qualified persons are available, it shall be viewed as if it was made with the *mala fide* intention to defeat the interests of the persons who already acquired qualification. It appears that the respondents contended before this Court in that Writ Petition that there was a ban for promotion and hence the promotion of the writ petitioner could not be considered. It appears that during the pendency of the writ petition, the ban was lifted for a period of three years and it was again imposed in 1987 and therefore the learned Judge Sri Justice Gogineni Radhakrishna Rao observed as follows:

> *"In this case, the ban was lifted. The date of lifting the ban will have to be*

taken into consideration."

In the counter, the respondents admitted that the ban was lifted on 19.04.1984. Thereafter, the said writ petition was disposed of on 30.11.1987. *In spite* of such an order, as the respondents did not consider the appellant's case for promotion as Manager and appointed unqualified persons to work as managers under the guise of ad-hoc arrangement, he filed another W.P.No.9713 of 1991 and this Court allowed the said writ petition directing the respondents to make immediate efforts to fill up the posts on permanent basis and when such posts are made on permanent basis, the petitioner will be entitled to claim that his promotion should be made retrospectively from the date the vacancy arises only in terms of the judgment in W.P.No.3218 of 1989. In the said orders His Lordship Justice T.N.C. Rangarajan narrated the plight of the writ petitioner while disapproving the defence put up by the respondents-bank in the said writ petition, as follows:

> *"I am not impressed with the defence put up by the respondent-bank. It is clear from the facts narrated above that this Court had more than once stated that the respondents 3 to 7 were not qualified to be promoted and hence if a permanent promotion had to take place only the petitioner and others like him would be eligible. The bank has, however, retained the respondents 3 to7 who were not qualified though they were seniors to the petitioner originally as in-charge of Manager in posts which fell vacant without filling those posts on permanent basis. Obviously if the posts had been filled up permanently, the petitioner would have had chance to be promoted at the time when the vacancy arose but he is unreasonably kept out of the chance of being promoted by keeping those who were not qualified as in-charge managers calling it an interim arrangement. But, the said interim arrangement has been continuing for the past several years with no hope for the petitioner to be considered for the promotion."*

The said writ petition was disposed of on 15.07.1996 and that order was also not implemented immediately on the ground that there was a second ban for promotions imposed by the Commissioner by way of circular. At last, on 27.03.1997 the respondents passed orders promoting the appellant as Manager giving retrospective effect from 30.10.1991 on the ground that Smt.Subba Laxmi who was exempted from educational qualification was promoted on

regular basis with effect from 30.10.1991 placing the appellant above Smt.Subba Laxmi in the seniority list.

Aggrieved of giving retrospective effect only from 31.10.1991, the appellant filed the writ concerned in this writ appeal contending that his promotion shall be given with effect from April, 1984 when the first ban was lifted. The appellant relied on the orders of this Court passed in W.P.No.7792 of 1984, dated 30.11.1987 and also the orders passed in W.P.No.9713 of 1991 dated 15.07.1996. The respondents in their counter stated that this Court in W.P.No.9713 of 1991 directed that the promotion of the appellant should be made retrospectively from the date the vacancy arises only in terms of the judgment in W.P.No.3218 of 1989 and that in the W.P.No.3218 of 1989 the promotion was given to the writ petitioners therein only from the date from which the respondent No.4 therein was promoted and that the same analogy is adopted in this case as the junior to the present appellant was promoted with effect from 30.10.1991 as manager on regular basis the appellant was also promoted with effect from that date and therefore they have duly complied with the orders of this Court in W.P.No.9713 of 1991. The learned single Judge accepted the defence taken by the respondents-bank and dismissed the writ.

So, the controversy in the instant case revolves round the interpretation of the orders passed by this Court in W.P.No.9713 of 1991. The respondents contended before the learned single Judge that there are no specific directions in the earlier writ petitions to promote the appellant as Manager from April, 1984 and the appellant-writ petitioner is not entitled to claim the promotion with effect from 19.04.1984. The learned single Judge though accepted the entire case of the writ petitioner, dismissed the writ petition on the ground that there are no specific directions in the earlier writ petitions basing on which the petitioner is entitled for the relief of either for promotion or for any other consequential benefits with effect from 1984 when the post of manager fell vacant. The learned single Judge interpreted the orders of this Court in W.P.No.9713 of 1991 that the appellant is to be promoted in the manner in which the writ petitioners in W.P.No.3218 of 1989 where the direction is only with effect from the date on which one of the respondents was promoted. But, admittedly, the writ petitioner herein is not a party to the said writ petition and the said writ petition does not relate to the promotion of Managers. The said writ petition was

in respect of promotion to the cadre of Assistant General Managers between the direct recruit managers and the promotee managers. Neither the writ petitioner nor the respondents 3 to 7 herein are the parties to the said writ petition. The judgment of the learned Judge Sri Justice T.N.C.Ranga Rajan made reference to the W.P.No.3218 of 1989 only in respect of consequential benefits. The learned single Judge nowhere stated that retrospective effect should be given only with effect from the date when the unqualified persons are promoted as managers on permanent basis. On the other hand, the learned judge, Justice T.N.C.Rangarajan gave specific direction that the petitioner's promotion should be made retrospectively from the date the vacancy arises. So, the date from which retrospective effect is to be given on promotion is made crystal clear in the orders dated 15.07.1996 and there is no ambiguity. The words *"only in terms of the judgment in W.P.No.3218 of 1989"* are added to the sentence *"that his promotion should be made retrospectively from the date the vacancy arises"* only in respect of consequential benefits. In this regard, it has to be noted that the learned judge allowed the writ petition with such direction and not as disposed of. Further the learned Judge was very much conscious of the observation made by Sri Justice Gogineni Radhakrishna Rao in the earlier W.P.No.7792 of 1984 dated 13.11.1987 which reads as follows: *"In this case the ban was lifted. The date of lifting the ban will have to be taken into consideration."* The ban referred to therein is the first ban, which was admittedly lifted on 19.04.1984. The learned Judge Sri Justice Gogineni Radhakrishna Rao directed to take that date for consideration for giving promotion. So, it cannot be said that the learned judge Sri Justice T.N.C.Rangarajan in the subsequent writ ignored the observation made by Sri Justice Gogineni Radhakrishna Rao in the earlier writ petitions. The reading of the judgment in W.P.No.9713 of 1991 discloses that the reference to W.P.No.3218 of 1989 was made in W.P.No.9713 of 1991 in view of the submission made by the counsel on behalf of the writ petitioner to the effect that there should be a direction as in the case of W.P.No.3218 of 1989 to consider the promotion of the petitioner from the date on which vacancy arose. In the said W.P.No.3218 of 1999 the vacancy arose on the date on which respondent No.4 therein was promoted and hence Sri Justice Lingarajarath gave such direction in W.P.No.3218 of 1989.

In the instant case, admittedly, the vacancy arose in 1984 and the respondents were permitted to give promotions to the eligible persons. Therefore, even if the direction given in W.P.No.3218 of 1989 is to be followed in this writ petition, the writ petitioner should be given promotion with retrospective effect from the date on which the vacancy arose. The learned counsel for the respondents 1 and 2 submitted that after the ban was lifted on 19.04.1984 when the respondents wanted to take up promotions, the revision petitioner approached the Court and filed W.P.No.7792 of 1984 challenging the relaxation given to his seniors in respect of their educational qualifications. On account of pendency of that writ petition which was disposed of on 13.11.1987, the respondents could not take up the promotions and that by the time of disposal of that writ petition, second ban was imposed in view of the merger of the Co-operative societies. Merely because the present writ petitioner filed writ petition earlier challenging the relaxation of qualification, it does not mean that the respondents are prevented from giving promotion to the writ petitioner. Even if it is assumed that the writ petitioner obtained stay in respect of promotions of the unqualified persons, the said stay does not operate against the writ petitioner himself. The eligibility of the writ petitioner for promotion was not in dispute. Therefore, the contention of the learned counsel for the respondents 1 and 2 in this regard is not tenable. Even otherwise from his own arguments it is clear that the vacancy arose on 19.04.1984.

The contention of the learned standing counsel that by 19.04.1984 there were 14 candidates who were senior to the appellant and therefore he is not entitled for promotion on 19.04.1984 is not sustainable because all those 14 candidates above the appellant in the seniority among the accountants were not qualified to be promoted as managers. The relaxation of the rules was admittedly set aside by this Court. It is the admitted case of the standing counsel that the present appellant is given seniority over Smt.Subbalaxmi who is shown against Sl.No.2 in the seniority list, as Smt.Subbalaxmi was unqualified candidate. There is also no material to show that the candidate shown against Sl.No.1 in the seniority list i.e. B.Seshagiri Rao was qualified. As Smt.Subbalaxmi was promoted as manager by passing B.Seshagiri Rao it is obvious that he was also not qualified to be promoted as manager. So, by no

stretch of imagination, it can be said that there were no qualified seniors to be promoted as managers among the accountants over and above the appellant herein. The other additional documents now filed do not improve the case of the respondents. In fact, some of those documents are already filed which are considered supra. Therefore, in any event of the matter, the promotion ought to have been given to the writ petitioner with retrospective effect from 19.04.1984. The learned Judge Sri Justice T.N.C.Rangarajan could not give specific direction in W.P.No.9713 of 1991 as the petitioner was yet to be considered for promotion by then. But the learned Judge gave direction as and when promotion was given to the writ petitioner, it should be made retrospectively from the date the vacancy arose. Admittedly by the date of filing of the writ petition, the writ petitioner was considered and he was promoted in the year 1997 giving retrospective effect from the year 1991. While giving retrospective effect to the promotion given to the writ petitioner, there is no basis to give retrospective effect only from 31.10.1991, though, in fact, the vacancy arose on 19.04.1984 and there was specific direction in both the earlier writ petitions that the promotion should be given with effect from the date when the vacancy arose. In our considered view the learned single Judge in this writ petition did not properly interpret the orders passed in the earlier
Writ Petitions Nos.7792 of 1984, dated 13.11.1987 and
9713 of 1991, dated 15.07.1996.

Regarding the subsequent promotions, as Assistant General Managers, the seniority of the writ petitioner in the cadre of Manager shall be counted from 19.04.1984 and in case seniority was taken into consideration, if the writ petitioner was eligible to be promoted, he should be given paper promotion as Assistant General Manager.

So far as the benefits in the higher posts are concerned, as the writ petitioner did not actually work in the higher capacity in promotional posts, he is entitled for only 50% of the additional salary benefits as awarded in W.P.No.3218 of 1989 by Sri Justice Lingarajarath in respect of some other employees while deciding the seniority of Assistant General Managers.

For the reasons stated supra, we are of the considered view that the learned single Judge erred in dismissing the writ petition and hence the orders passed by the learned single Judge are not sustainable and are liable to be set aside. Thus, both the points are found in favour of the appellant.

POINT NO. (iii):

In the result, the Writ Appeal is allowed. The respondents 1 and 2 are directed to treat the promotion of the writ petitioner as Manager with effect from 19.04.1984 instead of 31.10.1991 and calculate the seniority of the writ petitioner in the cadre of Managers from 19.04.1984 and give paper promotion if he was eligible in his turn for subsequent promotion as Assistant General Manager. Regarding the benefits the respondents
1 and 2 are directed to give 50% of the additional benefits in the

promoted cadre for the period for which the writ petitioner did not actually work in the promoted cadre. There shall be no order as to costs.

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SMT.T.MEENA KUMARI, J

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P.LAKSHMANA REDDY, J

Dated: -07-2005.

Ccm

To:

1 The Chairman, Hyderabad District Cooperative Central Bank

Limited, Nampally, Station Road, Hyderabad.
2 The Commissioner for Cooperation & Registrar of Coop.

Societies, Govt. of A.P., M.J. Road, Hyderabad.
3 Two CD copies.